

**BOARD OF ZONING APPEALS
MINUTES**

The Winchester Board of Zoning Appeals held its regular monthly meeting on, December 10, 2008, at 4:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Hurt, Koneczny, Phillips and Roberson.
ABSENT: Wiley.
STAFF: Grisdale and Walsh.
VISITORS: Crigler, Day and Robinson.

MINUTES

It was moved by Mr. Koneczny, seconded by Mr. Phillips, to approve the minutes as presented.

Motion passed unanimously 4-0.

CORRESPONDENCE

None

PUBLIC HEARINGS

BZA-08-30 Request of Winchester Fun Expedition, for a variance pertaining to required off-street parking, pursuant to Section 18-6-5.1 of the Winchester Zoning Ordinance, at 2173 South Pleasant Valley Road (*Section 272, Double Circle 1, Lot 11*), which is zoned Commercial Industrial (CM-1) District. *This request was tabled in October 2008 at the request of the applicant.*

Aaron Grisdale presented the request of the Winchester Fun Expedition for relief of the Ordinance regarding required off-street parking, so as to accommodate an expansion of use proposal.

They are proposing to erect an elevated structure for an expansion of use. The open-air structure will accommodate a go-kart track and (3) batting cages. As stated within their letter of intent, the structure will encompass 20,000 square feet of area. Based on the current Ordinance requirements for off-street parking for outdoor recreation, they would be required to have one space for each 200 square feet of outdoor recreation area, or a total of 100 parking spaces in addition to what currently exists on site. It may be surmised that the Ordinance does not take into consideration this specific type of outdoor recreation use.

The applicants indicate that industry standards dictate the number of karts allowed based on linear feet of track area. The total number of karts intended for the use is 13, which would most likely be occupied by only one person each. Similarly, each of the three batting cages can only be used by one person at a time. The applicant is requesting that instead of being required to provide 100 spaces for off-street parking that they be required to provide 16 spaces to accommodate these unique recreational uses.

During staff review of the proposal with the applicant's representative, discussion centered on the creation of the additional off-street parking spaces. There is little opportunity to create additional spaces on-site and any such expansion would require a revised site plan to be submitted and approved. In one particular proposal to create the additional spaces, the applicant proposed reducing the end island widths or creating additional space within existing end islands. The Director of Planning commented that the design would most likely not be approved, as it did not comply with Site Improvement standards within the Ordinance.

The applicants have also expressed that the current off-street parking that is provided for the existing use has very seldom reached full capacity. Having recently driven past the property during their one year anniversary party (which was a widely publicized event), it was noted that the parking lot was nearly full of vehicles and patrons. On other occasions; however, much less off-street parking was being utilized. The applicants have indicated that they have conducted surveys to measure the utilization of their parking accommodations. At the time of application, no additional information regarding those surveys was provided.

Staff has recommended that the applicants consider alternative plans, such as creating a multi-storied parking garage. One of the floors could then be used for the needed off-street parking, and another floor could be used for the amusement attractions. This type of structure would also alleviate any accessibility issues that may be present with their current schematic design proposal.

Chairman Hurt opened the public hearing.

David Day stated that surveys have found that normally this type of use does not fit any kind of Ordinance. Other cities have requested they go by industry standards being 1 go kart for every 40 linear feet. He explained that in order to do that he would need to have a decent amount of land to make it interesting. The batting cages are 50 ft wide 60 ft long and only hold one person at a time. Mr. Day concluded by saying that the parking lot is hardly ever full, the anniversary party being the exception. He felt comfortable with adding only 16 parking spaces.

Mr. Koneczny asked if the structure will be attached to the main building and if a parking garage would be an option.

Mr. Day explained that Wendy's is on one side and the strip mall is on the other, so the parking garage isn't an option. He tried to contact the owner of the property to the rear, but there are some environmental concerns there. He plans to leave the parking where it is and build an elevated track on columns.

Chairman Hurt asked if they will be gas karts and if there are any elevations showing what it will look like.

Mr. Day stated that they will be electric karts which are very safe. He explained that he presented a picture when he had the meeting with the planning dept but he didn't have one with him.

Mr. Koneczny felt that asking for a variance for 84 parking spaces is not a variance at all but actually changing the Ordinance, which is a big difference.

Mr. Day disagreed stating that he felt that adding 13 carts shouldn't require the need for 100 spaces.

Mr. Phillips asked if there would be other games or attractions on the second floor.

Mr. Day stated that it would only be the go karts and batting cages. He also added that in order to get to that second level, a person would have to come into the building and there is a limit on the amount of people allowed in the building which will not change. He argued that if the amount of people hasn't changed, he doesn't understand why there would be a need for additional parking.

Mr. Phillips asked if there would be an observation platform.

Mr. Day stated that there would only be a track and a pit area to store the karts.

Mr. Roberson asked if the only place to stand would be the queuing area.

Mr. Day stated that yes that would be the only place to stand.

Mr. Koneczny asked who would be riding, kids or adults.

Mr. Day stated that he hopes that adults would ride too.

Mr. Roberson asked what the height requirement will be.

Mr. Day stated that the drivers will have to be 54" tall and 11 years old.

Mr. Koneczny asked if Mr. Day thought that parents wouldn't want to be up there to watch their children drive.

Chairman Hurt stated that the applicant is going through a lot of expense to do this. He asked if it is really cost efficient for what is going to be gotten from it.

Mr. Day stated that it is going to cost \$700,000 and it will take 4-5 yrs to pay for itself. He felt that it is a much needed addition to the city. It is an added attraction that doesn't add any additional occupant load.

Mr. Phillips stated that places that he has been in the past with go karts there have been people watching. He asked if parents would be asked to send their children up unattended.

Mr. Day stated that there will be no room for observing or a seating area.

Mr. Roberson felt that based on the fact that the buildings occupancy load will not change and parking is sufficient today, that parking would be sufficient with the added attractions.

Mr. Koneczny stated that adding more attractions would in fact attract more people. He felt that there will be a problem with the occupancy load.

Mr. Roberson stated that the Fire Marshall has a code that is for that size of the building and the applicant cannot go over that or they will be in violation.

Chairman Hurt stated that it's only enforced if someone is actually counting the number of people coming in. He asked if this is something that's really needed at this facility.

Mr. Day stated that the problem with this location is that it's 3 times smaller than all the other locations. This is the only one that doesn't have a go kart track. He explained that they lease the building but because of Circuit City's financial issues they plan to try and purchase it. He stated that they wouldn't put this much money in the facility unless they could own the property.

Mr. Koneczny stated that they knew the limits of the location when they leased it. He felt that if this was approved that the Board would be legislating for the city and that is not their posture.

Mr. Day disagreed stating that it's the Board's responsibility to look at the ordinance and ask if it addresses everything and in this case it doesn't address a family entertainment center. He stated that he isn't trying to change the law, just pointing out that it isn't practical.

Mr. Phillips asked how long a child is normally there.

Mr. Day explained that they can either purchase a time card with attraction or purchase attractions separately. The time cards are sold in 1 and 2 hour blocks.

Mr. Phillips stated that there may be a case when a child is just dropped off.

Mr. Day explained that they do not allow drop offs. A child must be 16 year old and up in order to get in without a parent or guardian.

Mr. Phillips stated it makes his point that he is saying that a child under 16 yrs of age would be expected to go upstairs and operate a go kart without parental supervision because there is no room for them to observe.

Mr. Day stated that he guessed that would be true but that he doesn't let his kids go run around alone.

Chairman Hurt asked if there would be 13 children plus staff on the platform.

Mr. Day stated that there will be 2 staff per go kart and one in each batting cage at a time.

Mr. Koneczny stated that he does not know this business but he does know about being a parent and he would not allow his child to go drive a go kart without him being present especially it being on a second deck.

Mr. Phillips asked if there are any other elevated tracks and where is the closest one.

Mr. Day stated that they do have them and the closest one is in Ashville. It's about a quarter mile long track.

Mr. Phillips asked if that one has an observation area.

Mr. Day said that it doesn't have an observation area but it has a long handicap ramp with a parking lot and people can watch from there.

Bernie Robinson stated that he runs the businesses and what he wanted to explain is that only half of the karts can be run at a time. At the most there will be 7 and the rest will be charging. He felt that there would only be 10 people on the track plus staff at one time on the platform. He added that there is a very strict height regulation which would prevent the smaller children that would

need parental supervision from driving. Mr. Robinson explained that the electric system gives the operator full control, the whole thing can be stopped with one button. So if there was ever any horseplay, which is prohibited the operator can just turn it off. He felt it is very safe.

Mr. Koneczny stated that as a parent he is sure that if the child is there then the parent will be want to be there to observe.

Mr. Robinson explained that most of the kids that drive the karts, due to the height restriction, are old enough to drive a car. The ones that are a few years younger usually have the parent in line with them to ride in the double kart.

Mr. Roberson asked if the karts are large enough for adults.

Mr. Robinson stated that they are.

Mr. Phillips asked about the noise level since they are outside.

Mr. Day stated that there is zero noise unless it's the kids making the noise from enjoyment.

Mr. Phillips asked if it would be run year round.

Mr. Day stated that they would run all year unless the track is wet.

Mr. Roberson asked if there is a storage area.

Mr. Day stated that the go kart will be stored in the pit area and will be covered.

Chairman Hurt closed the public hearing.

Mr. Koneczny felt the variance was huge. Considering they haven't bought the property yet it wasn't a matter of urgency. He suggested that the applicants go to the City Council and get a text amendment to address the use of recreational space. He didn't want to set precedence by granting such a huge variance.

Mr. Phillips stated that he would recommend tabling the matter until some of the problems can be addressed.

Mr. Koneczny stated that it would be prolonging this. He felt they need to go to City Council.

Chairman Hurt stated that the BZA is only one hurdle that the applicant will have to have to deal with in this process. He agreed that is should be tabled.

It was moved by Mr. Phillips, seconded by Mr. Roberson, to table BZA-08-30.

Motion carried 3-1-1 Mr. Koneczny against and Mr. Wiley absent.

BZA-08-34 Request of DFC Architects, PC, for variances of the Winchester Zoning Ordinance pertaining to minimum lot area, Section 5.1-3-1; minimum lot width, Section 5.1-4-3; main building setback, Section 5.1-5-1; side yard setback, Section 5.1-6-1.2; corner side yard setback, Section 5.1-8-1; minimum off-street parking, Section 18-6-5.1; and, yard encroachments, Section 18-9-2.1, at 319-321 South Kent Street (*Section 193, Double Circle 1, Block R, Lot 19*), which is zoned Limited High Density Residential (HR-1), with Historic Winchester (HW) District overlay.

Aaron Grisdale presented the request seeking relief of the Ordinance regarding required lot area, lot width, setback, side yard, corner-side yard, and off-street parking, so as to accommodate a proposal to convert a non-conforming mixed-use property to that of a newly constructed two-family dwelling.

The applicant filed two separate applications for consideration to the Board of Architectural Review (BAR). The first application identified a request to demolish the existing two-story structure located at 319-321 South Kent Street. The second application was submitted to introduce the proposed structure that will be built on the subject property, following the demolition of the existing structure.

Both requests were approved, with a stipulation that the demolition of the existing structure could only proceed after the necessary variances and conditional use permit have been obtained. The Board of Architectural Review spoke in support of the variances for lot dimensional standards, as it would be consistent with the scale and architectural character of the surrounding neighborhood.

The applicant intends to demolish the existing structure, which has previously been used and occupied as a mixed-use commercial property. Two or more dwelling units and a convenience store had previously been included within the building. The nonconforming status of those uses has since lapsed and the current state of disrepair of the building renders rehabilitation economically infeasible.

The proposal submitted for review is to replace the existing structure with a newly constructed, two-family dwelling, which will also require a Conditional Use Permit. The applicant is interested in preserving the streetscape, scale, and context of the building within the neighborhood and a two-family dwelling most appropriately accomplishes that objective. The owner of the property, Ms. Vivienne Jackson intends to return to this address for her permanent residence, having relocated from 126-128 E. Cecil St. prior to its demolition.

Chairman Hurt opened the public hearing.

Don Crigler explained that the existing building is larger but in the same position as what's being proposed. He stated that the current lot size is 3178 sq ft. In the 60's, that lot occupied a single family residence, a tea room, a community store and three apartments with no off-street parking. What's being proposed is a two family dwelling. Even with a single family residence a variance would be required because the lot is that small. According to the Ordinance, in order to do this the lot size would need to be doubled. Since this is not possible, he reduced the size of the footprint. The current front porch encroaches on city property. After filing for a conditional use permit the parking requirement went from one per dwelling unit to two per unit. He asked for an exception to that, allowing one space per unit. The owner, Ms. Jackson will be occupying the bottom floor dwelling and more than likely will not be driving much longer. He reminded the Board that most buildings in the historic district do not have off-street parking. He stated that he would be available for questions.

Chairman Hurt stated that the setbacks will allow some landscaping in that area.

Mr. Koneczny stated that he went by to look at the building and he was amazed that it's still standing.

Mr. Crigler explained that he is trying to get through all of this approved because he doesn't know how long that will be the case. They have braced the back wall to support it but it is only a temporary solution.

Mr. Koneczny asked if this has been approved by the BAR (Board of Architectural Review).

Mr. Crigler explained that they gave a conceptual approval but he will need to go back with material details.

Chairman Hurt closed the public hearing.

It was moved by Mr. Phillips, seconded by Mr. Koneczny, to approve BZA-08-34 because:

1. That it is found:
 - i. That because of physical circumstances – such as, size, shape, topography, or other conditions, the variance is necessary to afford relief.
 - ii. It will have no adverse affect.
 - iii. Light or air will not be impaired to adjacent property.
 - iv. Congestion will not be substantially altered.
 - v. Neighborhood property values will not be substantially impaired.
 - vi. The amount of the variance is the minimum needed to afford relief.

Motion passed unanimously 4-0.

NEW BUSINESS

None

OLD BUSINESS

None

ADDITIONAL COMMENTS

Meeting adjourned: 4:50 pm